for six weeks. The words 'until payment of the sum due' appearing in section 328 (i) contemplate payment within such period. As the order stands the judgment-debtor was clearly liable for imprisonment for an indefinite term.

On both grounds therefore, I think the appeal must be allowed and the order appealed from set aside.

As regards costs, the appellant did not comply strictly with the terms of section 547 (i) in that the memorandum of appeal was not accompanied by a copy of the decree. In fact the appellant adopted the highly irregular procedure of writing personally to the Acting Chief Justice. In the circumstances the appeal will be allowed without costs.

Appeal allowed.

[ORIGINAL CIVIL JURISDICTION]

TERRELL, Ag. C.J.

July 27, 1933.

CHOI WAI YING.....Plaintiff

vs.

CHEONG WENG CHAN
CHEONG YOKE CHOY
CHEAH WAI YIN
KOK AH LING } .....Defendants.

[SELANGOR CIVIL SUIT No. 570 of 1932]

Courts Enactment 1918, section 49—Jurisdiction of Supreme Court—Suit for restitution of conjugal rights—Husband and wife—Tort—Action by wife for loss of husband's consortium.

In the Federated Malay States the Supreme Court may or may not have had original jurisdiction under section 49(i) of the Courts Enactment, 1918, to entertain a suit for restitution of conjugal rights among non-Christians, but if it had, such jurisdiction has been effectually taken away by the passing of the Divorce Enactment, 1928, and the repeal of the Secretary for Chinese Affairs Enactment, 1899, and the Perak Order in Council (Recognition of Chinese Laws) 1893.

For either spouse to leave the *consortium* of the other is a matrimonial offence and the Courts of the Federated Malay States cannot take cognizance of a matrimonial offence among Chinese.

Even if English Common Law principles were applicable, a wife who leaves her husband on account of the treatment received by her from her mother-in-law, has no right of action against her mother-in-law for the loss of her husband's *consortium*, because that loss was due to the wife's own act in voluntarily leaving her husband.

W. G. W. Hastings and *the Hon. Mr. S. Veerasamy* for the plaintiff.

Roland Braddell and *E. D. Shearn* for the defendants.

Cur. Ad. Vult.

TERRELL, ACTING C. J.—The plaintiff in this case was born in Canton of Chinese parents domiciled in Canton. On the 21st of November 1929, while still an infant, she contracted a marriage with the first defendant who was domiciled in the Federated Malay States. The marriage took place in Hong Kong according to the ancient Chinese ceremonies. After residing for two months in Hong Kong, the plaintiff, the first defendant, and the first defendant's parents, the second and third defendants came to Kuala Lumpur, and the plaintiff lived with her husband in the second defendant's house at 170 Pudu Road, Kuala Lumpur. The second defendant appears to have had five secondary wives, three of whom besides the third defendant were still living in the house at 170 Pudu Road when the plaintiff arrived from China. Accordingly, she entered an establishment where there were four mothers-in-law. The first defendant is the second defendant's only son.

On the 18th of August 1930, the plaintiff left the house, 170 Pudu Road, and went to her mother who was staying in Kuala Lumpur. She alleges that she was compelled to take this step owing to the harsh treatment she received, in particular, from the third defendant. After negotiations carried on by Mr. Veerasamy on the plaintiff's behalf, and through the good offices of Mr. San Ah Wing and Mr. Liew Weng Chee who interested themselves in the matter, the second defendant provided a house for the plaintiff at 9D Bukit Lintang Lane, Kuala Lumpur together with an allowance of $200 per month.

After she left the house in Pudu Road, the first defendant never saw the plaintiff again. She alleges that he was too frightened of his mother to attempt to do so. So matters continued until February 1932, when the first defendant contracted a marriage with the fourth defendant. On the 21st of November 1932 the plaint in this suit was filed.

As has been pointed out by counsel for the defence, the plaint really contains four different claims, which may be summarised as follows.

(1) against her husband the first defendant an order for restitution of conjugal rights;

(2) against the second and third defendants, damages for deprivation of her husband's *consortium*;

(3) against the first, second and third defendants, specific performance of an agreement alleged to have been made prior to the marriage, and providing for:—

  (a) that the plaintiff should be the first defendant's only wife;

  (b) that the second defendant should invest in the name of the plaintiff the sum of $300,000 in house property in Kuala Lumpur, as soon as they arrived there after the marriage;

  (c) that the plaintiff be allowed to visit her relatives in Hong Kong once in two years; and

  (d) that the plaintiff and her husband should be provided with a separate house to live in if the latter required it;

and alternatively against the second defendant damages for breach of the said agreement;

(4) a declaration that the marriage between the first and fourth defendants was void.

In view of the decision of the Court of Appeal in the case of *Geok Inn* v. *Yap Tai Chee*, 1 F. M. S. L. R. 51 plaintiff's counsel admitted

that it was not open to a Court of first instance to make an order for the restitution of conjugal rights.

At the close of the plaintiff's case, Mr. Braddell, on behalf of the defendants submitted that the claims numbered 1, 2 and 4 above were not maintainable. His objections by way of demurrer were not identical in all three cases, but his objection to the first claim, namely, that the Court had no jurisdiction in matrimonial matters between persons of Chinese race had to be conceded for reasons which I will mention later. I was also of the opinion that the fourth claim must fail on the ground that there was no evidence that the Chinese are monogamous. As to this claim Mr. Braddell had further objections of a technical nature on the interpretation of section 42 of the Specific Relief Enactment, to which I will refer later. After hearing Counsel in reply, I dismissed the plaintiff's first and fourth claims.

As regards the second claim, this was a matter of tort, and entirely different considerations apply. I directed, therefore, that the action so far as concerned the second and third claims should proceed.

Before, however, considering the second and third claims, as it has been suggested that the question of the restitution of conjugal rights, the subject of the first claim, may be carried further, it will be convenient if I record my views on the matter.

It is not argued that there is any particular Enactment giving the Court jurisdiction in matrimonial questions arising between Chinese; and the plaintiff can therefore only succeed if the Court has such jurisdiction by virtue of section 49(i) of the Courts Enactment 1918, or by virtue of its inherent jurisdiction. In the Courts Enactment, the jurisdiction of the Supreme Court is given in one short sentence:—

> "the said Court shall, subject to the provisions of this Enactment and of all other Enactments for the time being in force have jurisdiction in all suits, matters and questions of a civil nature."

It was conceded, as stated above, that as regards the jurisdiction to make an order for restitution in the case of Chinese, the decision of *Geok Inn* v. *Yap Tai Chee (supra)*, is binding on me. But a previous decision is only binding when the law which formed the basis of that decision remains the same. As will be seen, the law on which the decision was based has been entirely altered.

The case of *Geok Inn* v. *Yap Tai Chee* was decided in 1910 on the interpretation of section 46(i) of the Courts Enactment 1905. Section 49(i) of the Courts Enactment 1918 reproduced section 46(i) of the earlier Enactment, and in each case the following exception appears after the general words quoted above:

> "excepting only that nothing herein contained shall be deemed to authorise any Court to dissolve or annul a marriage lawfully solemnized between Christians in the United Kingdom of Great Britain and Ireland or in any British Colony, Possession or Protectorate."

These words have been repealed by section 1(ii) of the Divorce Enactment 1928.

Further, both Sir Thomas Braddell and Sir Archbald Law gave reasons founded on the words introducing sub-sections (ii) and (iii) of section 46. Sub-section (ii) commenced "In amplification and not in derogation of the aforesaid powers." These words are reproduced in section 49(ii) of the Enactment of 1918.

Section 46(iii) of the 1905 Enactment commenced "Further as aforesaid," and all the Judges in the cases cited agreed that these words must mean the same thing as the introductory words of section 46(ii).

Section 49(iii) of the Enactment 1918, however, commences "In further amplification of the generality of the foregoing powers." The words "not in derogation of" are therefore omitted, and might result in quite a different construction being placed on section 49(i).

Again, in 1910 the Perak Order in Council No. 23/1893 "Recognition of Chinese laws" and the Secretary for Chinese Affairs Enactment 1899 were both in force. By the Perak Order in Council, certain Chinese laws and customs therein set out were

> "declared to be law in the State of Perak and to be observed by all Courts of Justice in adjudicating upon all or any of the matters referred to in respect of any cause, suit or other proceeding either or both the parties to which is of Chinese nationality."

Among such laws and customs is the custom that no Chinaman may be lawfully married to more than one first or principal wife at the same time, and that a Chinaman may espouse as many inferior wives as he pleases.

This Order in Council has been regarded as applicable throughout the Federated Malay States (see *Yap Tham Thai* v. *Low Hup Neo*, 1 F. M. S. L. R. 383) and there can be no doubt that it contemplated that the Courts would have jurisdiction in the decision of certain matrimonial questions among Chinese.

The Order in Council was not referred to in any of the judgments in *Geok Inn* v. *Yap Tai Chee*, though it certainly might have been called in aid by Ebden, J. C., in his dissenting judgment, in support of the proposition that section 46(i) should not be given the narrow construction which the other Judges favoured. However, that may be, the Perak Order in Council has been repealed by section 1(ii) of the Distribution Enactment 1929. That Enactment only makes provision for the distribution of intestate estates. So far as any jurisdiction in matrimonial matters was conferred by the Perak Order in Council, those provisions have been repealed, and nothing has been put in their place.

As stated above, when *Geok Inn* v. *Yap Tai Chee* was decided, the Secretary for Chinese Affairs Enactment was in force, and in his dissenting judgment Ebden, J. C. places great reliance on it. The learned Judge points out that

under section 14 of the Secretary for Chinese Affairs Enactment 1899, the Secretary is empowered to adjudicate in various kinds of disputes between persons of Chinese nationality, and in particular may grant separation or divorce in the case of a Chinese marriage contracted with due formalities. Under section 30 a Judicial Commissioner may call for the record of proceedings held before the Secretary, and make any order thereon which may be necessary to secure substantial justice, and section 14 (vii) expressly provides that nothing in the section shall confer jurisdiction on the Secretary in any matter in which either party already had recourse to the Court. The Enactment, therefore, while conferring express jurisdiction on the Courts by way of appeal from the Secretary, impliedly recognises that the Courts already had original jurisdiction in the same matters.

This Enactment, however, has also been repealed by Selangor Enactment No. 3 of 1932, and again nothing has been put in its place.

In view of all the statutory amendments referred to above, the case of *Geok Inn* v. *Yap Tai Chee* cannot be regarded as an authority upon the law as it now stands.

It will be seen, however, that as a result of these amendments the plaintiff is actually in a worse position than she would have been if the case above cited could still be considered as an authority. The reconciliation of the provisions of the Courts Enactment, the Secretary for Chinese Affairs Enactment, and the Perak Order in Council was at the best a moot point, the two learned Judges who heard the case on appeal differed, and the Perak Order in Council was never referred to in the judgments. If the law had remained as it was, an appeal to a Court of three Judges might well have been successful, as the previous decision would not have been binding on such Court. In the events that have happened, however, the plaintiff is now faced by statutory provisions of unequivocal meaning which, in my opinion, are quite fatal to her claim.

In a recent case, *The Commissioner of Stamps* v. *Oei Tjong Swan and others*, 2 Malayan Law Journal, 107 the Privy Council held that though occasionally some assistance may be derived from an examination of the statutes upon which a Colonial Ordinance is founded, an examination of the Ordinance itself provided the best and safest guide of what the legislature intended, and later the judgment proceeds:—

> "Instead of first considering the terms of the Ordinance itself they" (the Courts of the Colony) "have at once entered upon an elaborate comparison of its provisions with those of the Imperial Finance Act of 1894, and proceeded to draw inferences from variations between the Ordinance and the Imperial Statute. This is a perilous course to adopt, and one which certainly does not commend itself to their Lordships."

It follows that, even when an Enactment is based on the provisions of an English Act but does not exactly follow them, it is dangerous to look at anything except the Enactment itself for its construction, and it is *a fortiori* not permissible, when an Enactment, such as the Courts Enactment, has no counterpart in English legislation, to treat the expression in section 49(i) "suits, matters and questions of a civil nature" as a term of art, and apply to it, as did the majority of the Judges in the case of *Geok Inn* v. *Yap Tai Chee*, a special meaning which might be attached to it if the matter arose for decision in an English Court. Such a method of approaching the question is, as the Privy Council has said, "not very profitable" [*Blackwood* v. *The Queen*, L. R. 8 A. C. 82 at page 91].

In considering the meaning of section 49(i) of the Courts Enactment 1918, the first thing to do is to see what the section says. The general civil jurisdiction of the Court is expressed to be "subject to the provisions of this Enactment and all other Enactments for the time being in force."

If, therefore, there is an Enactment which gives any special jurisdiction, the general jurisdiction given by the Courts Enactment is subject thereto. Matrimonial jurisdiction is now especially provided for by section 2(i) of the Divorce Enactment 1928 which reads:—

> "The Supreme Court.....shall have jurisdiction to make decrees of dissolution of marriage, of nullity of marriage, or judicial separation or of restitution of conjugal rights in accordance with the provisions of this Enactment."

It is not possible to interpret this section as reserving to the Courts any matrimonial jurisdiction, apart from the special jurisdiction conferred by the Enactment.

Then we find that it is provided in section 3(iii) of the Divorce Enactment as follows:—

> "The Court shall not make any decree of judicial separation or of restitution of conjugal rights except
>
> (*a*) when the petitioner professes the Christian Religion."

In view of the fact that the matrimonial jurisdiction of the Court is the subject of express Enactment, there can be no inherent jurisdiction in the same matter left to the Courts. I will, however, refer shortly to the authorities cited by Mr. Hastings on the point. He relied on the following passage from the judgment of Dr. Lushington in the Privy Council, in the case of *Ardaseer Cursetjee* v. *Perozeboye*, 6 Moo. Ind. App. 390.

> "We should much regret if there was no Court and no law whereby a remedy could be administered to the evils which must be incidental to married life amongst them" (i.e. the Parsees).

It appears to me that this argument is misconceived. The Indian case cited above was decided in connection with the Bombay Charter of Justice, which gave the Courts Ecclesiastical jurisdiction. The Ecclesiastical jurisdiction given by the Bombay Charter was similar to that given

to the Courts of the Straits Settlements, by the Charters of 1826 ahd 1855, and which was expressed to be given

> "so far as the several religions, manners and customs of the inhabitants of the Settlement and places will admit."

But the Bombay Charter in addition gave the Court jurisdiction on its civil side to apply native law and customs. As Dr. Lushington observes in the case above cited, at page 380:—

> "The civil Courts in India can bend their administration of justice to the laws of the various suitors who seek their aid. They can administer Mahomedan Law to Mahomedans, Hindoo Law to Hindoos."

There is no such provision in the Charter of the Straits Settlements, and in *Lim Chye Peow* v. *Wee Boon Teck*, 1 Kyshe 236 Hackett, Acting C. J. decided that special ecclesiastical jurisdiction having been given, there was no general civil jurisdiction which would enable him to entertain a suit for restitution of conjugal rights among non-Christians.

The Federated Malay States, of course, never had any Charter defining the jurisdiction of the Courts or the manner in which such jurisdiction should be exercised. In the Federated Malay States the Courts may or may not have had original jurisdiction under the wide wording of section 49(i) of the Courts Enactment, but if it had, such jurisdiction has been effectually taken away by the passing of the Divorce Enactment and the repeal of the Secretary for Chinese Affairs Enactment and the Perak Order in Council.

The net result, therefore, is that in the Federated Malay States the Courts cannot give effect to Chinese laws and customs, that by direct statutory provision remedies in matrimonial matters which are open to Christians are closed to Chinese, and that in view of the statutory provisions, the Court has no inherent jurisdiction left to exercise. It is not for the Courts to say whether it is right that the Chinese should be left without any remedy in cases in which the Courts would grant relief if the parties were Christians. As Baron Parke observed, in *Egerton* v. *Brownlow*, 4 H. L. C. 1 at page 123:—

> 'It is in the province of the Statesman and not the lawyer to discuss and of the legislature to determine, what is best for the public good, and to provide for it by proper Enactments. It is the province of the Judge to expound the law only and not to speculate what in his opinion is best for the community."

As regards the fourth claim which concerned the validity of the first defendant's marriage with the fourth defendant, it is quite clear that if the Perak Order in Council had still been in force, the claim would not have been maintainable, as the Order in Council recognises that the Chinese may have an inferior wife. But the effect of the repeal cannot be that Chinese are now to be regarded as monogamous. The only result is that, whereas previously the Court could give effect, in any matter which came before it, to the polygamous character of the Chinese, now it has no jurisdiction in the matter at all. Again, as section 9 of the Distribution Enactment of 1929 recognises after his death that a Chinese may have been polygamous, presumably he must have been polygamous when he was alive, and in the absence of any evidence to the contrary, and in view of the fact that the Privy Council has on various occasions recognised that the Chinese are a polygamous race, I can only hold that they are so.

This claim, therefore, must fail, and it is not really necessary to refer to the technical objections which were urged in connection with section 42 of the Specific Relief Act. I am of opinion, however, that the provisions of that section must be strictly complied with, and that as the plaintiff's status as wife has never been impugned by the fourth defendant, it is not open to the plaintiff to obtain a declaratory judgment against her.

To deal next with the third claim, the question of the alleged contract made prior to the marriage in Hong Kong. According to paragraph 6 of the plaint, the agreement was made between the plaintiff and her father and mother on the one side and all defendants on the other. It is admitted that the pleading was not accurate and that the plaintiff's father was not present. It is also admitted that the fourth defendant was not concerned in the matter. In the original particulars the date of the agreement was given as the 2nd October 1929, but at the trial these particulars were amended, and the date of the agreement was given as the 11th November 1929. On the 2nd October 1929, the second defendant was in fact in Kuala Lumpur.

The agreement alleged:—

(1) that after his marriage the first defendant should not take a second wife or a concubine during the lifetime of the plaintiff;

(2) that if the plaintiff so wished, the second and third defendants should provide a separate house for her to occupy with her husband;

(3) that after her arrival in Kuala Lumpur the second defendant would invest $300,000 in house property in her name; and

(4) that the plaintiff should be at liberty to visit her parents in Hong Kong once in every two years.

The agreement is absolutely denied by all the three defendants. As regards the second defendant, I do not think that the matters referred to were ever discussed before him. I am quite willing to believe that these matters were discussed between the plaintiff's mother and the third defendant. The plaintiff's mother made enquiries about the first defendant's family. She found that the second defendant was reputed to be a very rich man, but she also found out that he had four wives living in the house. It is obvious that the family of the plaintiff are much more modern in their outlook than the first defendant's family, and although it is impossible to say that monogamy has been accepted by the Chinese as a whole, there can be no doubt that there is a strong feeling in that direction, probably as the result of the greater education now enjoyed by Chinese women. If the idea of a second wife was distasteful, I have no doubt that the idea of the plaintiff occupying a house with four mothers-in-law was equally distasteful, and I think it highly probable that the third defendant gave the plaintiff's mother assurances on these points with which she was satisfied. On the other side of the account, the plaintiff's mother had to recognise that her daughter was marrying the only son of a very rich man, and that in the normal course of events such son would inherit all his property. The question of the plaintiff occasionally visiting her parents in Hong Kong was not a matter which need have caused any difficulty.

If there had been a definite pre-nuptial contract relative to these matters, one would have expected it to be reduced to writing. The parties were in Hong Kong, where there are plenty of lawyers, who could have given effect to the parties' intentions, and it is extraordinary that in matters of such importance the plaintiff's mother should have been satisfied with a bare verbal promise.

Then again, the Court cannot be indifferent to the subsequent conduct of the parties. When the plaintiff left the house in Pudu Road in August 1930, she immediately consulted Mr. Veerasamy, but she told him nothing about the alleged contract. The alleged contract is never referred to in any correspondence, and is mentioned for the first time in the plaint, filed in November 1932. The plaintiff and her mother admit that they never informed their lawyer until May 1932, 21 months after the relations between the parties had definitely broken down.

In the face of all this, it is impossible for the Court to hold that there was a definite contract which it could enforce. A contract even though verbal must be definite, and vague promises and polite assurances cannot be regarded as an adequate substitute in law. The plaintiff's claim under the third head must, therefore, fail.

As regards the second claim, I will first of all make my findings as to the facts, and then consider the law which I conceive to be applicable.

The plaintiff's case is that after the marriage feast in Kuala Lumpur, which took place in the 2nd moon (March 1930), the third defendant made her life so intolerable that finally she was forced to leave. She has no complaint, therefore, about her treatment during the first three or four months of her marriage. It is not necessary for me to enter into a disquisition on the various services and marks of respect which a daughter-in-law is expected to render when first entering the house of her husband's parents. It is sufficient to say that these duties, whatever they were, were carried out willingly by the plaintiff, and apparently to the satisfaction of the third defendant. San Ah Wing, who is a merchant of high standing, in Kuala Lumpur and a member of the Federal Council, stated that the period during which these services should be rendered is 100 days, and I have no reason to doubt his evidence on the point. The 100 days would roughly cover the period up to the marriage feast in March. I do not know why Chinese custom fixed a period of 100 days, but possibly the newly married wife might be expected to become pregnant during that period. Whatever the reasons, after this period the performance of such particular services, as serving the mothers-in-law with tea, is no longer required by Chinese custom, though the obligation to treat the husband's parents with respect continues.

After the wedding feast the plaintiff complains that the attitude of the third defendant changed. Not only was the continuance of the particular services required, but the plaintiff was also expected to perform various menial duties which in the household of a rich towkay would normally be performed by the servants. She was expected to clean the joss pot, and according to her own evidence and that of Loy Loh Cheng, who was a *mui tsai* in the house at the time, she was even required to clean the chairs and tables. She was expected to get up early in the morning to serve tea to her second mother-in-law who did the marketing. She had to wait up till the third defendant went to bed, and when the second

defendant came back late from his club, she had to wait and let him in. She was also subjected to petty annoyances. She had to fan the third defendant at meals, and so could not sit down to meals at the same time. She was prevented from washing her clothes every day on the ground that it would wear them out, and if she spoke to her husband during the day, she was stigmatized as shameless, or again, after having had only a few hours sleep during the night, if she rested during the day, she was told she was lazy. It must be remembered that the plaintiff had four mothers-in-law, who all expected attention from their daughter-in-law. They would complain to the third defendant who would scold the plaintiff.

For the first few months the plaintiff's mother also lived in the house, but the third defendant after a time made it clear that she was not a welcome guest, and she felt she could stay no longer and left the house in June 1930. After that the treatment of the plaintiff became worse, and she was not even allowed to visit her mother when she was ill.

The account I have given is a summary of the evidence of the plaintiff and her witnesses on the subject. The plaintiff herself was not seriously cross-examined as to the truth of her statements, and the plaintiff's mother and the *mui tsai* not at all. Mr. Braddell, defendant's counsel, took up the position that everything that the plaintiff was expected to do was in accordance with Chinese immemorial custom, and that the only reason for disagreement was that the plaintiff came from a family in Canton which had assimilated modern ideas and adopted a more western outlook on married life, while the second defendant's family still observed the strict rules which prevailed before the establishment of the Republic in 1910.

It is true that in this respect the family of the second defendant, like many Chinese families in Malaya, was far more conservative than the Chinese in China proper, just as the traditions of Royalist France were carried on in Quebec long after they had succumbed to the consequences of the Revolution in France itself. In some respects the outlook of the second defendant's household was still medieval, and it may be observed that a plurality of wives, though still in accordance with ancient Chinese custom, is looked at askance by many members of the younger generation. On the other hand I have no doubt that the plaintiff was perfectly well aware what would be expected of her in such a household, and comported herself accordingly. This is evidenced by the fact that for the first few months the plaintiff does not make any complaint of her treatment, and I am quite satisfied that any serious lapse on her part would not have been allowed to pass unnoticed.

I think also that defendants' counsel missed the point about the 100 days. During this period treatment which in western eyes might be considered harsh has the sanction of ancient custom, but to continue such treatment after the 100 days and to accentuate it could only be dictated by malice and spite, and could not be justified by such custom. The third defendant fully appreciated this aspect of the case, and threw over her counsel's plausible explanation. She could not and did not attempt to justify the treatment accorded to the plaintiff. She simply denied it. Her evidence is not supported, as the second defendant was rarely in the house, and the first defendant was a rather feeble young man entirely under his mother's influence. None of the other three mothers-in-law was called as a witness. After having heard the witnesses I have no doubt whatever that the plaintiff's story is substantially correct. Born and educated in Canton, she found herself a stranger in a strange land—she found herself alone in a household which became increasingly hostile to her presence—her mother was shown that her continued stay was unwelcome and had to leave. There remained her husband to whom I think she was very devoted, but in a household like that, where circumstances demand implicit obedience from a son even of full age, he could do nothing. Even if he had been a man of stronger character, I doubt whether he could have made any protest against the force of the tradition which encompassed him. In one of her letters the plaintiff reminds him that all he could do was to hold her hand and weep. However that may be, he was a broken reed for the plaintiff to rely on—whatever will he may have had was entirely overborne by his mother's.

I have no doubt that the plaintiff debated with herself long and anxiously before taking the step which she took finally of leaving the family house. It was of course a very serious step to take, and according to ancient Chinese custom, such a course could not possibly be condoned, whatever the cruelty to which a daughter-in-law was subjected. I think, however, that notwithstanding his evidence to the contrary, the fact that the second defendant in these circumstances provided the plaintiff with a house and with an allowance of $200/- a month, shows that he did have some qualms on the subject of the plaintiff's treatment by his wife. This inference is strengthened by the evidence of San Ah Wing, who said quite frankly that if a daughter-in-law of his left his house, he would give her nothing.

These then are the facts as I have found them, and they amount to this that the plaintiff was driven from the house by her mother-in-law's

treatment. The plaintiff accordingly sues her in tort for the loss of her husband's *consortium*.

Mr. Braddell argued that under the Common Law of England no such action would lie, and that there were no reported cases in which damages had been awarded against a mother-in-law as such, though it was common knowledge that hundreds of otherwise happy marriages had been broken up by their sinister activities. I think the argument can be carried a little further. For either spouse to leave the *consortium* of the other is a matrimonial offence, and I have already held that in the Federated Malay States, the Courts cannot take cognizance of a matrimonial offence amongst Chinese. If that is the case, how can a third party be sued in tort for inducing the commission of an offence of which the Court cannot take cognizance?

Assuming, however, that English Common Law principles apply, what is the established law on the subject? An action can apparently be brought by the wife against a third party for being directly responsible for the loss of her husband's *consortium*, *Lynch* v. *Knight*, 9 H.L.C. 577; 11 E.R. 854, although in that case a slander uttered to the husband and resulting in his driving his wife out of the house was held not to have been the natural and reasonable cause of the loss of such *consortium*. In the recent case of *Place* v. *Searle*, (1932) 2 K.B. 497 at page 513, Scrutton, L.J. approves the statement of the law in Lush's Husband and Wife, page 3, which reads:—

> "It is the duty of the wife to reside and consort with her husband. This is a duty which she owes him and a person who tempts or entices her to violate this duty commits a wrong towards the husband, for which he is entitled to recover damages."

At page 517 Greer, L. J. approves of this passage, though he would substitute the words "procures entices or persuades" for "tempts or entices." The form of action is open to both husband and wife, and this statement of the law has been followed by Swift, J. in the more recent case of *Newton* v. *Hardy* decided last month and not yet reported.

What it amounts to is this, that if the third defendant had "procured enticed or persuaded" her son to leave the plaintiff, the plaintiff's action would lie, so also presumably if the third defendant had "procured enticed or persuaded" the plaintiff to leave her son, an action against her would lie on the part of the son. But neither of these things happened. It was the plaintiff who committed the matrimonial offence, and now she is suing a third party who, she says, induced her to commit. It is as if a person assaulted another at the instigation of a third party, and then sued the instigator for having induced him to commit the assault. It may be true that it was the third defendant's treatment of her which finally induced the plaintiff to leave, but the actual loss of her husband's *consortium* was the result of her own act, done at her own volition. I am quite satisfied that there is no such form of action which from its very nature puts the plaintiff out of Court.

I hold, therefore, that none of the plaintiff's claims can be supported, and that the action must be dismissed with costs.

Judgment accordingly.

JOHORE.

[APPELLATE CIVIL JURISDICTION]

BURTON, J.

June 11, 1932.

S. R. M. S. PALANIAPPA CHETTIAR **Plaintiff.**

vs.

LIM HENG HIM ..... **Defendant.**

[MUAR MISCELLANEOUS APPLICATION No. 189 of 1931]

Land—Surat Semantara—Subject of charge—chargee, a decree-holder—whether a secured creditor—Civil Procedure Code, S. 296 of the Civil Procedure Code.

A Surat Semantara being an alienable interest can be the subject of hypothetication, notwithstanding the absence of any provision of law for the registration of such a charge.

Where a person sues his debtor for repayment of a loan secured by a charge on the debtor's property which is held under a Surat Semantara and obtains judgment, such a person is a "secured creditor" within the meaning of section 296 of the Civil Procedure Code of Johore.

The plaintiff in this case obtained in the Magistrate's Court at Muar a decree in default of appearance for the payment by the defendant of a sum of money lent to him by the plaintiff, the repayment of which was secured, or intended to be secured, by a charge over the land comprised in a certain Surat Semantara. As a Magistrate's Court has no power to order a sale of immoveable property, the plaintiff applied to the Supreme Court, for execution of his decree by the attachment and sale of the defendant's interest in the land over which he held a charge, and asked that the land be sold free of charge and that the plaintiff be deemed a preferential creditor.

The application was heard by Mr. O. H. Grove on the 28th December 1931.

M. V. Pillai for the plaintiff.

Cur. Ad. Vult.